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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SHARON POLE, individually, and on behalf of other members of the putative class, and on behalf of aggrieved employees pursuant to the Private Attorney General Act ("PAGA"), Plaintiff, v. ESTENSON LOGISTICS, LLC, a Nevada limited liability company, Defendants.	Case No. CV 15-07196 DDP (Ex) **ORDER GRANTING MOTION FOR CLASS CERTIFICATION** [Dkt. No. 15]

Presently before the Court is Plaintiff Sharon Pole's Motion for Class Certification. (Dkt. 15.) After considering the parties' submissions and hearing oral argument, the Court adopts the following Order.

I. BACKGROUND

This case arises out of an employee classification dispute between Plaintiff Sharon Pole and her former employer, Defendant

Estenson Logistics, LLC ("Estenson"). Estenson is a third-party trucking company that moves product for its customers from distribution centers to retail stores located in California. (Plaintiff's Appendix of Evidence ("PA") 6-7 (Deposition of Michelle Alexander 12:2-15:5).) Plaintiff was formerly employed by Estenson as a "Fleet Manager." (Complaint ¶ 14.) Plaintiff brings this action on the grounds that Estenson misclassified her as an "exempt" employee and paid her on a salary basis, without any compensation for overtime hours worked and missed meal periods or rest breaks. (Id. ¶ 15.)

In the present motion, Plaintiff seeks to certify the following class under Federal Rule of Civil Procedure 23(b)(3):

> All current and former California-based salaried "Fleet Managers," or persons who held similar job titles and/or performed similar job duties, who worked for Estenson within the State of California from September 6, 2010 to final judgment.

(Motion for Class Certification ("Mot.") 1.) The gravamen of Plaintiff's class certification theory is that "Estenson misclassified her and other Fleet Managers as exempt because their job duties fail to satisfy any of the requirements for the executive or administrative exemptions." (Id. 1.)

A. Estenson's Operation

Estenson operates out of approximately forty-six distribution centers in California, some of which operate 24 hours a day. (Declaration of Michelle Alexander ¶ 2; Alexander Dep. 26:10-17.) Each location is overseen by a single Site Manager. (Alexander Dep. 89:21-24.) The site mangers are "ultimately . . . responsible for the operations of each facility." Each facility also employs administrative staff, drivers, and yard hostlers. (Id. 23:21-24:5.)

At eleven of these facilities, Estenson employs "Fleet Managers." (Id. 15:16-16:3.) These facilities are located across California. (Id. 18:7-19 (noting facilities from Redlands, CA in the south to Tracy, CA in the north).) Based on the size of operations, a location can have anywhere from one to five Fleet Managers employed at any given time. (Alexander Decl. ¶ 4.) During her employment, Plaintiff was one of two Fleet Managers at the Lathrop, CA location. (Plaintiff's Dep. 73:10-11.)

B. Fleet Manager's Responsibilities

According to Estenson's 2013 Fleet Manager job description, the position's responsibilities include ensuring loads are delivered on time, investigating complaints, ensuring company safety policies are understood, assisting in safety inspections and trainings, and filing paperwork generated by shipping activities. (See PA 140-141.) Other versions of the job description include tasks such as enforcing rules and company policies, ensuring safety and compliance, internal and external customer service, HR related tasks like hiring and training, scheduling, billing, complying with reporting requirements, and assisting the site manager. (See PA 135-138.) Estenson has confirmed that these job duties apply to all Fleet Managers and are not site-specific. (Alexander Dep. 58:4-8.)

Plaintiff asserts that, on a day-to-day basis, Fleet Managers are primarily responsible for dispatching truck drivers, data entry, and taking calls. (PA 190 (Allen Decl. ¶ 4.); PA 193-14 (Dorado Decl. ¶ 6); PA 196 (Elliot Decl. ¶ 5); PA 199-200 (Jones Decl. ¶ 6); PA 202 (Taylor Decl. ¶ 5); PA 205 (Thompson Decl. ¶ 5.).) Fleet Managers create "route packets" based on a load planners assessment of how to arrange a customer's delivery

requests and give these packets to drivers, along with their keys. (Alexander Dep. 26:22-27:24; 61:18-64:25.) Fleet Managers also collect paperwork submitted by truck drivers and input into Estenson's computer system. (Alexander Dep. 73:16-24.) Furthermore, Fleet Managers handle all in-bound truck driver calls, including accident and maintenance reports. (Alexander Dep. 199:5-7; 92:5-97:6.) Some Fleet Managers were also given a "checklist" that memorializes many of these duties. (PA 143-44; PA 101-02 (Towell Depo. 75:6-76:2.)

Estenson elaborates on this account of a Fleet Manager's duties by noting additional responsibilities. For example, Estenson describes the specific considerations a Fleet Manager might accoutn for when deciding how to assign a particular driver to a delivery route. (Alexander Dep. 36:6-37:9; 46:16-19.) Estenson also notes the various responsibilities involved in responding to customer complaints or handling other customer inquiries. (Suarez Decl. ¶¶ 10-11.) While Estenson describes some commonalities in the Fleet Manager role, it also elaborates on the differences. For instance, Estenson explains that larger facilities with more drivers have divided responsibilities among multiple Fleet Managers--with some handling loan planning and billing and others focusing on driver communications--while smaller facilities will have only a single Fleet Manager who is responsible for a broader range of responsibilities. (Towell Dep. 76:3-77:14.)

C. Classification of Fleet Managers as Exempt

The basis of Plaintiff's suit is that Estenson misclassifies its Fleet Managers as exempt. (Alexander Dep. 28:4-12.) As exempt employees, Estenson does not pay overtime to its Fleet Managers

when they work longer than eight hours a day or forty hours a week. (Alexander Dep. 122:13-124:1.) Estenson also does not provide its Fleet Managers with meal and rest breaks. (Towell Dep. 59:22-60:3.) According to Plaintiff, Fleet Managers routinely work longer than eight hours and did not take lunch or rest breaks. (Towell Dep. 21:4-12; PA 191 (Allen Decl. ¶ 7); PA 194 (Dorado Decl. ¶ 9); PA 118 (Pole Dep. 104:1-18); PA 191 (Allen Decl. ¶ 8.).) Defendants acknowledge that Fleet Managers are not entitled to overtime and do not receive scheduled meal and rest breaks but submit evidence that some Fleet Managers have taken lunch breaks. (Suarez Decl. ¶ 15; Towell Dep. 64:9-20.)

II. LEGAL STANDARD

The party seeking class certification bears the burden of showing that each of the four requirements of Rule 23(a) and at least one of the requirements of Rule 23(b) are met. See Meyer v. Portfolio Recovery Assocs., LLC, 707 F.3d 1036, 1041 (9th Cir. 2012); Hanon v. Dataprods. Corp., 976 F.2d 497, 508-09 (9th Cir. 1992). In determining whether to certify a class, a court must conduct a "rigorous analysis" to determine whether the party seeking certification has met the prerequisites of Rule 23 of the Federal Rules of Civil Procedure. Valentino v. Carter-Wallace, Inc., 97 F.3d 1227, 1233 (9th Cir. 1996). Rule 23(a) sets forth four prerequisites for class certification:

> (1) the class is so numerous that joinder of all members is impracticable;
> (2) there are questions of law or fact common to the class;
> (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and
> (4) the representative parties will fairly and adequately protect the interests of the class.

Fed. R. Civ. P. 23(a); see also Hanon, 976 F.2d at 508. These four requirements are often referred to as (1) numerosity, (2) commonality, (3) typicality, and (4) adequacy. See General Tel. Co. v. Falcon, 457 U.S. 147, 156 (1982).

In determining the propriety of a class action, the question is not whether the plaintiff has stated a cause of action or will prevail on the merits, but rather whether the requirements of Rule 23 are met. Eisen v. Carlisle & Jacquelin, 417 U.S. 156, 178 (1974). This Court, therefore, considers the merits of the underlying claim to the extent that the merits overlap with the Rule 23(a) requirements, but will not conduct a "mini-trial" or determine at this stage whether Plaintiffs could actually prevail. Ellis v. Costco Wholesale Corp., 657 F.3d 970, 981, 983 n.8 (9th Cir. 2011); see also Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338, 131 S. Ct. 2541, 2551-52 (2011).

Rule 23(b) defines different types of classes. Leyva v. Medline Indus. Inc., 716 F.3d 510, 512 (9th Cir. 2012). Relevant here, Rule 23(b)(3) requires that "questions of law or fact common to class members predominate over individual questions . . . and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3).

III. DISCUSSION

A. Rule 23(a) Prerequisites

To show that class certification is warranted, Plaintiffs must show that all four prerequisites listed in Rule 23(a) are satisfied.

1. Numerosity

Numerosity is satisfied if "the class is so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). The Ninth Circuit has elaborated that impracticable is not the same as impossible but instead asks courts to determine whether "potential class members would suffer a strong litigation hardship or inconvenience if joinder were required." Rannis v. Recchia, 380 F. App'x 646, 650–51 (9th Cir. 2010) (citing Harris v. Palm Springs Alpine Estates, Inc., 329 F.2d 909, 913–14 (9th Cir.1964)). The "numerosity requirement requires examination of the specific facts of each case and imposes no absolute limitations." Gen. Tel. Co. of the Nw. v. Equal Employment Opportunity Comm'n, 446 U.S. 318, 330 (1980). The Ninth Circuit has typically required at least fifteen members to certify a class, Harik v. Cal. Teachers Ass'n, 326 F.3d 1042, 1051 (9th Cir. 2003), and has usually held classes of forty members or more satisfy numerosity, Rannis, 380 F. App'x 651.

Plaintiff's Motion for Class Certification states that the putative class includes approximately "45 Fleet Managers." (Mot. 11.) Both Estenson's Opposition to the Motion for Class Certification and Plaintiff's Reply note that there are 55 potential class members. (Opp'n 11; Reply 15.) On these representations, the court would be inclined to find the numerosity requirement satisfied. Since the completion of briefing, however, Estenson has submitted a Notice of Newly Acquired Facts stating that thirty-four current Fleet Managers and nine former employees have executed release agreements for all claims at issue, leaving "only 17 former employees" in the

putative class. (Notice of Newly Acquired Facts ¶ 1.) Estenson did not provide a copy of the release.

Plaintiff challenges the legal effect and enforceability of these undisclosed releases. (Plaintiff's Response to Defendant's Newly Acquired Facts ¶ 1.) According to Plaintiff, the releases must be deemed invalid because they purportedly include a release of the Private Attorney General Act (PAGA) claims, which requires court approval. See Cal. Lab. Code § 2699(l)(2). Plaintiff also contends that even if the releases exist and are valid, they do not alter the class certification analysis because they only release claims that pre-date the release. (Id. ¶ 3 (citing Alexander Dep. 63:18-25, attached to Plaintiff's Response to Defendant's Newly Acquired Facts.) At bottom, Plaintiff's theory of class certification is that Estenson misclassifies Fleet Managers as exempt, and therefore improperly denies them mandated overtime pay and breaks. Even if a current employee released their prior claims, Plaintiff contends that these employees are still misclassified and continue suffer the resulting harms in the course of their employment. Because Plaintiff seeks to certify a class of all Fleet Managers "who worked for Estenson within the State of California from September 6, 2010 to final judgment," Plaintiff believes these current employees should still be considered part of the class. (Mot. 1.)

Without knowing the specifics of the release, the court cannot conclusively determine the validity of the releases. For instance, the court cannot determine if the releases were invalid under California Labor Code section 206.5(a), which prohibits an employer from conditioning wages due on the execution of a

release. Likewise, Plaintiff correctly notes that a release of PAGA claims requires court approval but the implications of that are less apparent for the class certification motion. While individuals cannot release an employer from liability to the state, individuals can waive their own right to bring PAGA claims. See Waisbein v. UBS Financial Services Inc., No. C-07-2328 MMC, 2007 WL 4287334, at *3 (C.D. Cal. Dec. 5, 2007). In the instance case, the PAGA waiver may not have any impact on class certification because Plaintiff does not claim to bring the PAGA claims as a class action. To the contrary, she expressly states in her class certification motion that she is bringing the PAGA claim as a representative action that does not require class certification. (Mot. 1.) Thus, the only filed PAGA claim at this juncture–and thus the only PAGA settlement that might require court approval–is Plaintiff's representative claim against Estenson. There is no reason to believe that the releases attempt to waive Plaintiff's right to pursue her PAGA action.

Even assuming the validity of the releases, however, the putative class still meets the numerosity requirement because there are more than forty members to pursue the misclassification claim. While the precise number of class members has fluctuated across the parties' various filing, the last count from Defendant asserts that there are "thirty-four (34) putative class members who are current employees" and "seventeen (17) former employee[s] . . . who have not executed binding settlement agreements with Estenson." (Notice of Newly Acquired Facts ¶ 1.) Thus, there are at least fifty-one individual with a potential misclassification claim against Estenson who are eligible to participate in the

putative class action. As Defendant's notice acknowledges, "the thirty-four current employees who executed release agreements are now barred from pursuing claims for damages that pre-date the date on which they signed the agreements . . . ." (Id. (emphasis added).)

At least one California court has confronted precisely this issue when evaluating the effect of a release where employees released their employer "from all claims for unpaid overtime and any other Labor Code violations," agreed "not to participate in any class action that may include . . . any of the released Claims," and acknowledged that "he or she had spent more than 50% of the time performing managerial duties." Chindarah v. Pick Up Stix, Inc., 171 Cal. App. 4th 796, 798 (2009). In that case, the court upheld that validity of the release because the class action only concerned past unpaid overtime and the release "did not purport to exonerate [the employer] from future violations." This distinction is critical because under California law, "the statutory right to receive overtime pay embodied in section 1194 is unwaivable." Gentry v. Superior Court, 42 Cal. 4th 443, 456 (2007) abrogation on other grounds recognized by Iskanian v. CLS Transp. Los Angeles, LLC, 59 Cal. 4th 348, 366 (2014). Here, where the purported class claim includes allegations of an ongoing misclassification violation, any release by current employees of past claims does not exclude these individuals from participating in a class seeking to correct the misclassification.

With approximately fifty-one class members, the court concludes that the numerosity requirement is met. Out of an abundance of caution, however, the court proceeds to consider

whether even a seventeen-member class would meet the numerosity requirement in this case.[1] As noted aboved, the "specific facts of each case must be examined to determine if impracticability exists." Haley v. Medtronic, Inc., 169 F.R.D. 643, 647 (C.D. Cal. 1996). In determining whether the requisite numerosity exists in cases where the class number is not great, courts consider "the geographical diversity of class members, the ability of individual claimants to institute separate suits, and whether injunctive or declaratory relief is sought." Jordan v. Los Angeles Cty., 669 F.2d 1311, 1319 (9th Cir. 1982), vacated on other grounds, 459 U.S. 810 (1982).

(a) Geographical Diversity

There is "no *per se* rule on the number of widely dispersed plaintiffs necessary to support a finding of numerosity." McCluskey v. Trustees of Red Dot Corp. Employee Stock Ownership Plan & Trust, 268 F.R.D. 670, 675 (W.D. Wash. 2010). Courts have found that the numerosity requirement was met where plaintiffs were merely dispersed across counties within the same state. Id. (citing Novella v. Westchester County, 443 F.Supp.2d 540, 546 (S.D. N.Y., 2006)); see also Brink v. First Credit Resources, 185

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[1] The court undertakes this inquiry both because, without knowing the specific language of the release, it may emerge that the release is more expansive than currently assumed and in the event that additional releases further alter the numerical composition of the class. In the event that additional releases are secured, district courts have found a "duty to supervise communications with potential class members exists even before a class is certified" if it is required to ensure "'the fairness of the litigation process, the adequacy of representation, and the administration of justice generally.'" Cheverez v. Plains all Am. Pipeline, LP, No. CV 15-4113 PSG (JEMx), 2016 WL 861107, at *2 (C.D. Cal. Mar. 3, 2016) (quoting In re Oil Spill by the Oil Rig 'Deepwater Horizon' in the Gulf of Mexico on Apr. 20, 2010, No. 10-md-02179, 2011 WL 323866, at *2. (E.D. La. Feb. 2, 2011)).

F.R.D. 567, 570 (D. Ariz. 1999) (holding that the joinder was impractical partially because class members are located throughout the state of Arizona). Similar to the facts at issue here, the court in Agauyo v. Oldenkamp Trucking held that joinder of the proposed class of 34 was impractical because "[t]he plaintiffs are truck drivers who likely live near both . . . Bakersfield, which is within this District, and near Ontario, which is outside this district[.]" Aguayo v. Oldenkamp Trucking, 2005 WL 2436477, at *12 (E.D. Cal., October 3, 2005). Consequently, "[i]t would likely be difficult for individuals to prosecute in this distant forum." Id.; but see Sandoval v. M1 Auto Collisions Centers, 309 F.R.D. 549, 562 (N.D. Cal. 2015) (holding that numerosity was not met where the proposed class had only seventeen members who were all working in the San Francisco Bay Area).

In the present case, Fleet Managers are employed in at least the following California cities: Lathrop, Tracy, Bakersfield, Fremont, Mira Loma, Ontario, Redland, La Mirada, and Fontana. (Alexander Dep. 18:10-15.) Assuming that the release of claims did not result in the remaining putative class members all being located in the same or nearby cities, the court finds that the geographical diversity factor counsels in favor of meeting the numerosity requirement.

(b) Ability to Bring Suit Separately

The ability of individual class members to bring suit individually can make joinder impractical when potential class members lack the financial resources to file individual suits. McCluskey, 268 F.R.D. at 675. Putative class members are less able to bring their claims individually when their claims are

relatively small, making it unlikely that the individual would pursue relief absent class certification. Millan v. Cascade Water Services, Inc., 310 F.R.D. 593, 603 (E.D. Cal. 2015); see also Chastain v. Cam, 2016 WL 1572542, at *1 (D. Ore. April 19, 2016) (holding that joinder is impractical in part because "Plaintiffs allege small amounts of individual damages for unpaid breaks"). Individual class members are also unlikely to sue independently when they face fear or retaliation from an employer. See Buttino, 1992 WL 12013803, at *2 (holding that numerosity was satisfied in part because "many individual claimants would have difficulty filing individual lawsuits out of fear of retaliation, exposure, and/or prejudice, such that it is unlikely that individual class members would institute separate suits"); see also Aguayo, 2005 WL 2435477, at *12 (citing Mullen v. Treasure Chest Casino, LLC, 186 F.3d 620, 625 (5th Cir. 1999)) (noting that "some of the potential class members are still employed with defendant and are unlikely to institute action against their employer").

Here, where some potential class members are still employed by Estenson and where the claims are for foregone overtime and breaks, the court finds that ability to individually bring suit counsels in favor of finding numerosity.

(c) Relief Sought

The numerosity requirement is "relaxed" when injunctive or declaratory relief is sought. Sueoka v. U.S., 2004 WL 1042541, at *2 (9th Cir., May 5, 2004). This is largely because the type of relief sought necessarily implicates judicial economy where a judgment granting an injunction would avoid duplicative suits brought by other class members. See Escalante v. California

Physicians' Service, 309 F.R.D. 612, 618 (finding that a class of 19 is still sufficiently numerous because "Plaintiff in this case is requesting declaratory and injunctive relief" and because "allowing a class action to be brought would be in the interests of judicial economy"). While there may ultimately be some individualized damage calculations, this putative class includes claims for both injunctive and declaratory relief. Given the facts presented in this case, it would be inefficient and unduly burden the court's docket to require each individual Fleet Manager to separately litigate their misclassification claim.

Evaluating the numerosity factors as a whole, and bearing in mind considerations of judicial economy, Plaintiff's putative class satisfies the numerosity requirement.

2. Commonality

Commonality is satisfied if "there are questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). Note that this does not mean that *all* questions of law and fact must be identical across the class; "[t]he requirements of Rule 23(a)(2) have been construed permissively, and all questions of fact and law need not be common to satisfy the rule." Ellis v. Costco Wholesale Corp., 657 F.3d 970, 981 (9th Cir. 2011) (internal quotation marks and brackets omitted). However, posing common questions of trivial fact is not enough: the "question" must be one that "will generate common answers apt to drive the resolution of the litigation." Wal-Mart Stores, Inc. v. Dukes, 131 S. Ct. 2541, 2551 (2011).

The common question raised by Plaintiff's potential class is whether Estenson properly classified Fleet Managers as exempt

employees, and thus was not required to pay overtime or schedule meal and rest breaks. According to Plaintiff, the commonality requirement is met because the evidence demonstrates that Estenson did not meet any of the requirements of invoking either the administrative or executive exemption. (Mot. 20.)

Under California law, an individual "employed in the transportation industry" qualifies as exempt if the following criteria are met:

> (1) Executive Exemption A person employed in an executive capacity means any employee:
> > (a) Whose duties and responsibilities involve the management of the enterprise in which he/she is employed or of a customarily recognized department or subdivision thereof; and
> > (b) Who customarily and regularly directs the work of two or more other employees therein; and
> > (c) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight; and
> > (d) Who customarily and regularly exercises discretion and independent judgment; and
> > (e) Who is primarily engaged in duties which meet the test of the exemption. . . .
>
> (2) Administrative Exemption A person employed in an administrative capacity means any employee:
> > (a) Whose duties and responsibilities involve either:
> > > (i) The performance of office or non-manual work directly related to management policies or general business operations of his employer or his/her employer's customers; or
> > > (ii) The performance of functions in the administration of a school system, or educational establishment or institution, or of a department or subdivision thereof, in work directly related to the academic instruction or training carried on therein; and
> > (b) Who customarily and regularly exercises discretion and independent judgment; and
> > (c) Who regularly and directly assists a proprietor, or an employee employed in a bona fide executive or administrative capacity
> > (d) Who performs under only general supervision work along specialized or technical lines requiring special training, experience, or knowledge; or

> (e) Who executes under only general supervision special assignments and tasks; and
> (f) Who is primarily engaged in duties that meet the test of the exemption. . . .

Cal. Code Regs. tit. 8, § 11090. Plaintiff argues that Estenson's Fleet Managers do not satisfy any of the requirements for invoking an exemption but this is a greater burden than Plaintiff needs to take on to demonstrate commonality. The statutory test for invoking an exemption is conjunctive. Thus, if Plaintiff can demonstrate that all Fleet Managers do not engage in any one of the required duties under each exception or that they are not primarily engaged in such duties, she will have supplied a common answer that will drive the resolution of this litigation.

Between Estenson's uniform job description of the Fleet Manager position and the testimony of Estenson's Rule 30(b)(6) witness that Estenson expects its Fleet Managers to perform the same duties regardless of their employment location, Plaintiff argues that commonality is satisfied. (Alexander Dep. 57:11-25; 58:4-8.) Defendant responds that even if a group of employees are tasked with the same duties, questions about how each employee performs their duty may preclude class certification in the exemption classification context. (Opp'n 18-20.) In support, Estenson relies on Fjeld v. Penske Logistics, LLC, No. CV 12-3500-GHK JCGX, 2013 WL 8360535 (C.D. Cal. Aug. 9, 2013). In Fjeld, the court considered whether to certify a class of Operations Supervisors who spent the majority of their time "assign[ing] drivers and trucks to routes to make [timely] deliveries based upon customer needs." Id. at *5. The court determined that resolution of the exemption claim turned on

whether this task required discretion and independent judgement. Id. ("For there to be classwide answers on whether the relevant tasks are exempt, Plaintiff must make a threshold showing that the putative class members are preforming the tasks in a substantially similar manner, e.g., by taking into account a similar set of factors."). In the absence of any evidence about how any potential class members other than the plaintiff performed this task, the court found that putative class did not meet the burden of demonstrating commonality.

In the Reply, Plaintiff argues that Fjeld does not resolve her certification claim because she submitted evidence about the factors Fleet Managers must rely on to complete the tasks Estenson posits are discretionary. (Reply 18-21.) With regard to assigning drivers to routes, Plaintiff has submitted evidence that a computer program decides whether a driver can be assigned to a route. (Suarez Dep. at 170:8–171:10.) Likewise, with regard to managing truck breakdowns, Plaintiff has submitted evidence that Fleet Managers call a tow truck from a pre-approved list of vendors and follow the instructions of the maintenance coordinator. (Suraez Dep. 127:9-128:1.) According to Plaintiffs, any choice a Fleet Manager must make are highly structured and largely predetermined.

While there appears to be some variation in the tasks individual Fleet Managers perform, there is also substantial commonality in the tasks Fleet Managers are expected to perform according to both job descriptions issued by Estenson and the individual testimony submitted before the court. Determining whether these tasks satisfy the requirements for classifying an

employee as exempt under California law is the sort of question amenable to classwide resolution and adequate to satisfy the commonality requirement under Rule 23(a)(2).

3. Typicality

Typicality is satisfied if "the claims or defenses of the representative parties are typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). "The purpose of the typicality requirement is to assure that the interest of the named representative aligns with the interests of the class. Typicality refers to *the nature of the claim or defense* of the class representative, and *not to the specific facts from which it arose* or the relief sought. The test of typicality is whether other members have the same *or similar* injury . . . ." Hanon v. Dataproducts Corp., 976 F.2d 497, 508 (9th Cir. 1992) (internal quotation marks omitted) (citations omitted) (emphasis added).

Plaintiff argues that her claims are typical in that they are premised on her employment as a Fleet Manager and that there are no defenses unique to her case. Defendants do not expressly challenge this claim. Perhaps Defendants' argument that commonality is not satisfied because different Fleet Managers have different responsibilities can be understood to also challenge the typicality of Plaintiff's claims. But the court has already determined that different Fleet Managers do not appear to have such distinct responsibilities that their classification does not present a common question of law. The court cannot find any additional reason to doubt the typicality of Plaintiff's claims. Thus, the court concludes that typicality is satisfied.

4. Adequacy

Adequacy of representation is satisfied if "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). Inasmuch as it is conceptually distinct from commonality and typicality, this prerequisite is primarily concerned with "the competency of class counsel and conflicts of interest." Gen. Tel. Co. of Southwest v. Falcon, 457 U.S. 147, 158 n.13 (1982). Thus, "courts must resolve two questions: (1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?" Ellis, 657 F.3d at 985. In this case, there is no dispute over this requirement.

B. Rule 23(b)(3)

A class action may be certified under Rule 23(b)(3) if "the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). In making its findings on these two issues, courts may consider "the class members' interests in individually controlling the prosecution or defense of separate actions," "the extent and nature of any litigation concerning the controversy already begun by or against class members," "the desirability or undesirability of concentrating the litigation of the claims in the particular forum," and "the likely difficulties in managing a class action." Id.

1. Predominance

"The Rule 23(b)(3) predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." Amchem Products, Inc. v. Windsor, 521 U.S. 591, 623 (1997). "Even if Rule 23(a)'s commonality requirement may be satisfied by [a] shared experience, the predominance criterion is far more demanding." Id. at 623-24. Predominance cannot be satisfied if there is a much "greater number" of "significant questions peculiar to the several categories of class members, and to individuals within each category." Id. at 624. However, Rule 23(b)(3) predominance "requires a showing that *questions* common to the class predominate, not that those questions will be answered, on the merits, in favor of the class." Amgen Inc. v. Connecticut Ret. Plans & Trust Funds, 133 S. Ct. 1184, 1191 (2013).

Plaintiff argues that predominance is satisfied because the realistic requirements of the Fleet Manager positions are identical and that any variation in the position is so minimal as to have no effect on the question of whether a Fleet Manager's duties satisfy any of the requirements for an administrative or executive exemption. (Mot. 23-24.) Defendant asserts that there is variation in the duties of different Fleet Managers. Defendant also argues that this class cannot be certified because it runs afoul of the holding in Comcast Corp v. Behrend, 133 S. Ct. 1426 (2013), that the predominance requirement is not satisfied where "questions of individual damage calculations will inevitably overwhelm questions common to the class." Id. at 1433. Here, Fleet Managers did not record their time and Plaintiff acknowledges they did not all work the same number of hours. (Alexander Dep. 11:2-

12:1; Response to Special Interrogatory Nos. 8-10, Gruber Decl., Ex. D.) Thus, Defendant contends that there is no workable method for calculating damages that would not require individual determinations, which overwhelm the efficiency of the class device.

As an initial matter, Comcast cannot be read as a general prohibition on class actions when damages cannot be calculated on a classwide basis. Rather, Comcast stands for the proposition that a "plaintiff must be able to show that their damages stemmed from the defendant's actions that created the legal liability." Leyva v. Medline Indus., Inc., 716 F.3d 510, 514 (9th Cir. 2013). The issue in Comcast was whether a particular model for calculating damages was permissible if it did not only calculate the damages for the theory of liability advanced by plaintiffs. Comcast, 133 S. Ct. at 1433. The Ninth Circuit has repeatedly held since Comcast that "differences in damage calculations do not defeat class certification after Comcast." Pulaski & Middleman, LLC v. Google, Inc., 802 F.3d 979, 988 (9th Cir. 2015), cert. denied, 136 S. Ct. 2410 (2016); accord Jimenez v. Allstate Insurance Co., 765 F.3d 1161, 1167 (9th Cir. 2014).

Here, the Plaintiff posits a single theory of class liability: Fleet Managers are misclassified as exempt. Assuming that can be demonstrated, Comcast requires a damage model that can computer the injury caused by that misclassification without including additional theories of injury that were not prove. It does not stand for the proposition that no model can be utilized to calculate damages. In this case, Defendants do not provide, nor can the court discern, a reason why the damages model would be

unable to calculate the injury suffered by unpaid overtime and missed rest and meal breaks of this class of Plaintiffs. As to the question of whether individual questions of liability predominate, the court concludes that this putative class satisfies the predominance requirement. Defendants have submitted evidence that there is some variation in the specifics tasks performed by individual Fleet Managers but Plaintiffs contend that these variations do not address the central question of whether Fleet Managers performed any tasks that would justify an exempt classification. Based on the evidence submitted of the substantial overlap in the Fleet Manager role and the lack of evidence that the some individual Fleet Managers are engaged primarily in exempt tasks, the court finds that predominance requirement is satisfied.

2. Superiority

Rule 23(b)(3) also requires a class action to be "superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). The Rule further provides four factors the Court must consider in Rule 23(b)(3)(A) through (D):

> (A) the class members' interests in individually controlling the prosecution or defense of separate actions;
> (B) the extent and nature of any litigation concerning the controversy already begun by or against class members;
> (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and
> (D) the likely difficulties in managing a class action.

Here, Plaintiff argues that Fleet Managers have nearly identical responsibilities and none of those responsibilities qualify the position as exempt. (Mot. 24-25.) Given this theory of

liability, Plaintiff contends that the class device is superior to repeated mini-trials showing that a Fleet Manager performs the same responsibilities and is not properly classified as exempt. (Id.) Defendant main argument as to superiority is that Plaintiff has not submitted "a suitable and realistic plan for trial of the class claims" and that individual trials would allow the court to better assess the duties and responsibilities of individual Fleet Managers. (Opp'n 24 (quoting Zinser v. Accufix Research Inst., Inc., 253 F.3d 1180, 1189 (9th Cir. 2001)).) In this particular case, the variation between Fleet Managers's responsibilities appears limited and does not contravene Plaintiff's contention that all Fleet Managers do not engage in certain activities required to invoke either the administrative or executive exemption. This issue appears to amenable to classwide resolution and would more efficiently answer the classification question than requiring numerous individual trials.

IV. CONCLUSION

For the reasons set forth above, the Court GRANTS Plaintiff's Motion for Class Certification.

IT IS SO ORDERED.

Dated: August 10, 2016

DEAN D. PREGERSON
United States District Judge